

It is apparent to me that the order made by the learned magistrate awarding costs of adjournment against the defendant was made purely on account of a hostile attitude which he had taken to the defendant's counsel in what he thought was the usurpation of the court's authority and power by the counsel concerned. The discretion exercised by him was not a judicial discretion but sprang out of spite. In the circumstances the order of the learned magistrate awarding costs to the plaintiff for an adjournment which he had himself asked is set aside and an order substituted therefor that the plaintiff do pay the costs of that adjournment.

I need only add that a reasonable and workable amount of harmony and goodwill, if not a complete accord and adjustment, ought to prevail between the Bench and the Bar and the mere fact that a presiding officer of the court whether he be a judge or a magistrate sits a few feet higher than the floor from which the counsel addresses him should make no difference in the attitude, duties and status of the two. Both of them are part of the same machinery of justice. Both of them are essentially men of law and presumably of honour, no doubt performing different functions but those functions are aimed at one and the same end and that is the administration of justice with dignity, courtesy and honour and these qualities should be seen and reflected in their respective conduct and behaviour. The Bench and the Bar both serve the public and the law which the public is expected to respect and honour. Those connected with the administration of law and justice should be so worthy as to command that respect and honour.

Order accordingly.

Solicitors: *Lim Cho Hock & Co.; L. H. Singh & Co.*

CHE SU BINTI SHAFIE v. SUPERINTENDENT OF PRISONS, PULAU JEREJAK, PENANG

[O.C.J. (Chang Min Tat J.) August 30, 1973]

[Penang — Originating Motion No. 13 of 1973]

Habeas Corpus — Detention Order — Allegation that grounds of detention not served on detenu — New order made — Allegation of mala fides — Emergency (Public Order and Prevention of Crime) Ordinance, 1969, ss. 4(1) and 5(2)(b).

This was an application for an order of *habeas corpus* in respect of a detainee. The question was whether the detenu was detained on a valid order under the law. It was urged that there was failure to comply with the provisions of section 5(2)(b) of the Emergency (Public Order and Prevention of Crime), 1969, requiring that the detenu be furnished by the Minister with the grounds of his detention and that the Minister was acting *mala fide* in signing a new order.

Held: (1) the failure, if any, to observe in full the provisions of section 5(2)(b) of the Emergency (Public Order and Prevention of Crime) Ordinance 1969, could not invalidate the order made by the Minister under section 4(1) of the Ordinance;

(2) on the facts of the case, no question of *mala fides* could arise, as it was always open to the authorities to cure a defective order in the proceedings.

Cases referred to:-

(1) *Greene v. Secretary of State for Home Affairs* [1942] A.C. 284.

(2) *Musa bin Salleh v. Public Prosecutor* [1973] 1 M.L.J. 167.

(3) *Naranjan Singh v. State of Punjab* A.I.R. 1952 S.C. 106.

ORIGINATING MOTION.

Karpal Singh for the applicant.

Abu Talib bin Othman (Legal Adviser, Penang) for the respondent.

Chang Min Tat J. (delivering oral judgment): In approaching this application for *habeas corpus* I remind myself of what Viscount Maugham in *Greene v. Secretary of State for Home Affairs*⁽¹⁾ said in his speech at page 290:

"My Lords, I am certain that this House would be very unwilling to curtail or diminish the rights of an applicant for a writ of *habeas corpus ad subjiciendum*, but we are, of course, sitting in a judicial capacity and are bound by the law as it exists. It is inaccurate to say, as some have said, that the writ is applicable as a remedy in all cases of wrongful deprivation of personal liberty. What the judges of the High Court can do at the instance of the imprisoned person is to command the production of the person and to inquire into the cause of his imprisonment. If there is no legal justification for the detention, the party is ordered to be released."

I would therefore assure Mr. Karpal Singh for the applicant that I also share the sentiments of Suffian F.J. in *Musa bin Salleh v. Public Prosecutor*⁽²⁾ at page 169, that the court should lean in favour of the subject concerned and also of Rigby J. (as he then was) that the subject could always rely on technical defects to invalidate the order which deprived them of their liberties.

But the question before me is whether the detenu is presently detained on a valid order under the law. Whatever might have been the position with regard to the order made under section 4(1) of the Emergency (Public Order and Prevention of Crime) Ordinance No. 5 of 1969 bearing the date or purporting to bear the date 6 August 1973, that position has now been changed since that order has been revoked as the Minister of Home Affairs is perfectly entitled to do. He has now made a new order, signed under his hand, dated 21 August 1973 which has been served on the detenu. In view of this development, Mr. Karpal Singh for the applicant now based his fight for the liberty of the detenu upon an attack on this new order.

His first ground was directed not to the order but to the purported failure to comply with the provisions of section 5(2)(b) requiring that the detenu be furnished by the Minister with the grounds of his detention. It was said that this failure rendered the order invalid, as being of a mandatory nature.

On the other hand, it was contended by the Legal Adviser that the grounds under section 5(2)(b) which were signed by an official of the department by the direction of the Minister were in compliance with the requirements of this section. It was suggested that the requirements were not mandatory and that in any event there were under the Delegation of Powers Ordinance in section 6 provisions for the delegation of an administrative act.

The view I take of the case is this: It is my duty to examine whether the detenu is detained under a valid order. The order of 21 August 1973 is a valid order and no attack has been or can be mounted against this particular order. Whether section 5(2)(b)

must be read in the sense as contended by Mr. Karpal Singh, it is not necessary for me to decide and I express no firm opinion on it. But the failure, if any, to observe in full this section cannot, in my view, invalidate the order made by the Minister under section 4(1).

The second ground is that the Minister was acting *mala fide*, in signing the new order. With the greatest of respect, having regard to the facts of the case, I cannot see how the question of *mala fides* can arise. An order was made originally for the detention of this particular person. It was for some reason or other tampered with by being made to bear a date which would not appear to be the date intended by the Minister for the commencement of the detention of the detenu. The relevant authorities now concede that the original order might well be defective but for the same reasons as moved the then Minister to make the first order, the present incumbent has made another similar order. With the greatest of respect, I am therefore unable to see how any question of bad faith can be raised on this fact. It is always open to the authorities to cure a defective order in the proceedings. If authority is required, reference can be made to the decision of the Supreme Court of India in *Naranjan Singh v. State of Punjab*⁽³⁾ at page 108 relied on by the learned Legal Adviser.

"(8) It is contended by the Advocate General of the Punjab that the decision reported in *Basant Chandra v. Emperor*, 1945 F.C.R. 81 is clear authority in support of the validity of the aforesaid order. On essentially similar facts, the court laid down two propositions both of which have application here. (1) Where an earlier order of detention is defective merely on formal grounds, there is nothing to preclude a proper order of detention being based on the pre-existing grounds themselves, especially in cases in which the sufficiency of the grounds is not examinable by the courts, and (2) If at any time before the court directs the release of the detenu, a valid order directing his detention is produced, the court cannot direct his release merely on the ground that at some prior stage there was no valid cause for detention. The question is not whether the later order validates the earlier detention but whether in the face of the later valid order the court can direct the release of the petitioner. The learned judges point out that the analogy of civil proceedings in which the rights of parties have ordinarily to be ascertained as on the date of the institution of the proceedings has no application to proceedings in the nature of *habeas corpus* where the court is concerned solely with the question whether the applicant is being lawfully detained or not."

To revert to the first case, I cited, *Greene's* case, in this case there was the Home Secretary's order but a serious mistake was made by the Advisory Committee to whom the appellant made objections, the mistake being a failure to give the appellant the correct reasons for his detention and it was held that however reprehensible the mistake might be, it did not invalidate the order of the Home Secretary. In the words of Lord Macmillan at page 297

"...the production of the Secretary of State's order, the authenticity and good faith of which is in no way impugned, constitutes a complete and peremptory answer to the appellant's application. It justifies in law his detention in the absence of any relevant challenge of its validity, and there is no such challenge."

The order nisi is discharged. It means that the detenu will now return to custody.

Order accordingly.

Solicitors: *Karpal Singh, Wong & Co.*

A DAVIES v. MADO'S ENTERPRISE & ORS.

[O.C.J. (Syed Othman J.) December 16, 1973]
[Johore Bahru — Civil Suit No. 228 of 1970]

Damages — Personal injuries — Chemical burns leaving scars and keloid formation — Assessment of damages.

In this case the plaintiff was involved in a road accident and as a result of being pinned under a landrover he suffered chemical burns, which after treatment left scars and keloid formations. The defendants and the third party agreed that they were equally to be blamed for the accident and the question was as to the amount of general damages that should be awarded for the injuries.

Held: in all the circumstances of this case the sum of \$12,000 would be appropriate and reasonable.

C Cases referred to:-

- (1) *Chai Koi Fah & Ors. v. Lai Choy Kang & Anor.* [1967] 1 M.L.J. xl.
- (2) *Foulder v. Canadian Pacific Steamship Ltd.* [1969] 1 All E.R. 283.

CIVIL SUIT.

D *P. Suppiah* (Dr. R. S. Grewal with him) for the plaintiff.

G. Tara Singh Sidhu for the defendants.

P. Devadas for the third party.

E **Syed Othman J.:** The plaintiff, a soldier in the British army, was pinned under the landrover in which he had been travelling after a road accident at the 6th milestone Johore Bharu — Kota Tinggi road, Johore on 11th January, 1968. Petrol from the landrover spilled over his body. When he was rescued he had chemical burns. He was in hospital here and in Britain undergoing treatment for 140 days.

F He brought an action for damages against the defendants who in turn brought in the third party claiming indemnity or contribution. The defendants and the third party now agree that they are equally to be blamed for the accident.

The question is how much should the court award to the plaintiff as general damages for his injuries. This is the first case of its kind here.

G There are several medical reports on the plaintiff. They read in effect as follows. He was admitted to Johore Bahru hospital on 11th January, 1968 in an unconscious state and in respiratory distress. Emergency tracheostomy was done and he regained consciousness. He had chemical burns on his face, right arm, right thigh and front of trunk. He also had a small laceration of the right middle finger. The next day he was transferred to the British military hospital where further treatment was given. Burns toilet was performed. He had 40% mixed partial and full thickness burns involving face, neck, right shoulder and upper arm, axilla and trunk. Routine tracheostomy toilet was continued. At re-dressing on 23rd January, 1968 it was found that he had full thickness burns on ½ of back of neck, all deltoid and axilla, and patchy areas on the right supra scapular region. Patch skin grafting was done in February and March, 1968. After 60 days at the British military hospital he was sent to the United Kingdom for further treatment. In the United Kingdom he had an operation for the release of burn scar contracture of the right side of the neck and right axilla. There was no post-operation difficul-